IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, CRIMINAL JURISDICTION

CRIMINAL APPLICATION NO. 2069 OF 2005
IN
CRIMINAL APPEAL NO. 336 OF 2005

1. Faijan Rizvan Khan,
2. Rafiq Madar Khan. .. Applicants
(Orig. Accused Nos. 1 and 2)

Versus

The State of Maharashtra. .. Respondent

Shri. M. K. Kochrekar with Shri. Rajeev M. Sawant, Advocates, for the Applicant.

Shri. Vithal Konde-Deshmukh, A. P. P. for the Respondent-State.

CORAM : A. M. KHANWILKAR, J.
DATE : NOVEMBER 21, 2005

P. C.

. Heard learned Counsel for the parties.

2. By this application, the applicants pray that they be released on bail in relation to Sessions Case No. 250 of 2003 whereunder they have been convicted for the offences punishable under section 489 (C) read with section 34 and Section 489 (D) read with section 34 of the Indian Penal Code and awarded sentence of rigorous imprisonment for seven years and 10 years respectively and to pay a fine of Rs. 5,000/-eachin default, to

further undergo rigorous imprisonment for three months.

3. *Prima facie,* I find substance in the arguments canvassed on behalf of the applicants that the Prosecution case should fail as there is no evidence to establish the recovery of the offending articles at the instance of the applicants. The Prosecution case is that the recovery of the articles was made from a tailoring shop at Bandra at the instance of Accused No. 1. However, a perusal of the evidence of Sayyed Gafar Mohd (P.W. 6) shows that the Police visited the tailoring shop on 10.1.2003, when the articles have been recovered, Accused No. 1 was not brought by the Police. If the Accused was not accompanying the Police at the relevant time, it is inconceivable as to how the said recovery can be attributed at the instance of Accused No. 1. In so far as the recovery of the scanning machine from the hotel room is concerned,I find substance in the argument canvassed on behalf of the applicants that even that recovery is of no avail. In the first place, Maheshkumar Naval Sing Thakur (P.W. 1) clearly accepted in his evidence that he did not make enquiry as to who was the owner of Regal Boutique Shop nor were A.P.Is. Sankhe and Bhosale were with him in the enquiry of the said shop. He has further stated that he has not taken any document from the said Regal

Boutique Shop. What is interesting to note is that he has accepted in paragraph (57) of his evidence that he did not make enquiry with the manager about the register of the inmates of the hotel or room or about the ownership of the hotel. If this is the nature of the evidence, the recovery from room No. 105 also becomes doubtful. To get over this position, the learned A.P.P. has relied upon the evidence of Dattatray Ganpat Sankhe (P. W.7) who has stated that Accused No. 1 took the Police Party to the concerned hotel and the manager opened room No. 105 where Accused No. 2 was residing. As mentioned earlier, no enquiry has been made with regard to the inmate register to establish the fact that the Accused was occupying the said room. That evidence was necessary. In any case, the lower Court has acquitted the Accused of the offence punishable under section 489 (A) of the Indian Penal Code on the reasoning that there was no evidence to establish the fact that the scanning machine recovered from the room was utilised for counterfeiting of notes. If such is the evidence on record, *prima facie,* the applicants have a very good case on merit for which reason the applicants deserve to be released on bail. The applicants have already undergone two years and ten months during the trial and during the pendency of this appeal.

4. Accordingly, the applicants are released on bail on strict condition s as follows :

i) The applicants are directed to be enlarged on bail on furnishing PR Bond in the sum of Rs. 1,00,000/= each with two local sureties respectively in the like amount.

ii) The applicants shall report to the D.C.B., C.I.D., Mumbai on the first Monday of every English Calendar Month between 10 A.M. and 12 Noon.

iii) They shall furnish their latest place of residence to the D.C.B., C.I.D. Unit XII.

iv) They shall surrender their passports to the D.C.B., C.I.D. Unit XII, if available. If no passport is available, the applicants shall file affidiavits disclosing that fact.

5. The criminal applicatilon is disposed of in the above terms.

(A. M. KHANWILKAR, J.)